DR HEMA THIYAGU v. PENGARAH PENGANGKUTAN JALAN, NEGERI PULAU PINANG & ORS

HIGH COURT MALAYA, PULAU PINANG
ANAND PONNUDURAI J
[CIVIL SUIT NO: PA-21NCvC-14-05-2022]
26 SEPTEMBER 2023

Abstract – *A statutory duty is indeed imposed upon the Road Transport Department ('RTD') to maintain a proper register containing full particulars of a vehicle, pursuant to s. 8 of the Road Transport Act 1987, for the benefit of the public. If there is any information made available in relation to the possible deception of a vehicle, it is incumbent upon them to ensure that the same is reflected on the register or some other method to red flag the vehicle so that innocent members of the public do not purchase the same, and that all steps be taken immediately to seize the said vehicle for investigation. It would be a breach of its statutory duty if it fails to do so as the members of the public clearly rely on the RTD to validate a transfer of ownership of a vehicle.*

ROAD TRANSPORT: *Vehicles – Transfer of ownership – Registration of transfer – Vehicle found to be 'cloned' – Seizure of vehicle due to signs of tampering on engine number and chassis number – Whether seizure of vehicle and its continued detention in breach of s. 64 of Road Transport Act 1987 – Whether there was statutory duty to maintain proper register containing full particulars of vehicle*

The plaintiff purchased a second-hand vehicle, a Toyota Vellfire, bearing the registration number PPJ 7711 ('vehicle') and became the registered owner of the same after paying a total amount of RM138,985. Prior to the registration of ownership in the name of the plaintiff on 21 July 2020, the vehicle was brought to a facility owned and operated by Puspakom Sdn Bhd ('Puspakom') for inspection and examination. It was a requirement under other relevant laws or regulations applicable that the transfer of ownership of a motor vehicle can only be perfected upon inspection and examination of Puspakom in its facilities. Having inspected and examined the said vehicle, Puspakom issued a certificate captioned 'sijil pemeriksaan tukar milik' which confirmed, *inter alia*, that the structural condition, the engine number and the chassis number were in order and free from any defect or interference. Upon completion of the aforementioned process, the plaintiff officially became the registered owner of the said vehicle and in recognition thereof, the Road Transport Department issued a 'sijil pemilikan kenderaan' which contained, *inter alia*, the material description of the vehicle including the chassis number and the engine number. The plaintiff then utilised the said vehicle without any issue until April 2021 when she received a document

from the second defendant captioned 'notis panggilan temu siasat'. *Vide* this document, the second defendant requested the plaintiff to bring the said vehicle to the first defendant's office which she obliged. The Road Transport Department officers then examined the vehicle thoroughly in the presence of the plaintiff and her husband where the plaintiff was instructed to bring the said vehicle to the Chemist Department for further inspection. The said vehicle was then taken to the Chemist Department where an inspection was done whereafter the plaintiff was allowed to return with the said vehicle. Not long after, the plaintiff was served with another document where she was directed to bring the said vehicle to the compound of the Enforcement Unit of the Road Transport Department. *Vide* this document, the second defendant informed that the said vehicle was being seized pursuant to s. 64 of the Road Transport Act 1987 ('RTA') as there were signs of interference or tampering on the engine number and the chassis number of the said vehicle. An officer acting under the instruction of the first defendant took possession of the said vehicle and issued/served the plaintiff a notice of seizure pursuant to s. 64(1) of the RTA. Before the plaintiff became its registered owner, there were successive changes of ownership in respect of the said vehicle, pursuant to s. 13 of the RTA, of which all were undertaken in the offices of the defendants. The plaintiff thus claimed (i) that there was no basis to seize the said vehicle in the first place; (ii) that a cause of action existed founded on the tort of detinue on the basis of a continued wrongful detention of the said vehicle; and (iii) alternatively, there had been a breach of statutory duty by the defendants. The issues that arose for determination were (i) whether the seizure of the said vehicle and its continued detention was in breach of s. 64 of the RTA and was a basis for claim in detinue; (ii) whether there was a breach of statutory duty by the defendants; and (iii) what was the available remedy to the plaintiff.

Held (allowing plaintiff's claim against defendants for breach of statutory duty):

(1) The claim on the basis of detinue was misplaced. First and foremost, since there was no dispute that the vehicle was in contravention of RTA by virtue of the fact that it was a cloned vehicle, the said vehicle was lawfully seized with the issuance of the form under s. 64(1) of the RTA. Section 64(1) of the RTA clearly empowers the defendants to seize the said vehicle if it was necessary to cause the discontinuance of an offence. Bearing in mind that the allowing of a cloned vehicle to remain on the road was an offence, there was certainly a legal basis and lawful justification to seize the said vehicle. (para 33)

(2) The obligation to refer the matter to the Magistrate, as stipulated under s. 64(4) of the RTA, only applies if there is no claim by its owner. This was fortified by the use of the words 'if within three months from the

date of its detention, the motor vehicle is not claimed by its owner, that officer shall refer the matter to a Magistrate.' In this case, since there was a claim by the plaintiff within three months *ie*, on 30 July 2021, there was arguably no reason to refer the matter to the Magistrate to make an order for the forfeiture or disposal of the said vehicle. (para 35)

(3) Bearing in mind that the vehicle was proven to be a cloned vehicle, the defendants were more than justified in not returning the said vehicle to the plaintiff when requested or at the expiry of three months as provided under s. 64 of the RTA. If the plaintiff's contention was acceded to *ie*, the said vehicle ought to be returned to the plaintiff upon request or at the end of the three-month detention period, that would entail a breach of the obligations of the defendants in that it would tantamount to them allowing the continuance of an offence of having a cloned vehicle on the road when the very purpose of s. 64 of the RTA is to allow the seizure and detention of a motor vehicle to cause the discontinuance of an offence. Thus, as the seizure and detention of the plaintiff's vehicle was not wrongful, the plaintiff's claim on the basis of detinue must fail. (paras 36-40)

(4) A statutory duty is indeed imposed upon the defendants to maintain a proper register containing full particulars of a vehicle pursuant to s. 8 of the RTA for the benefit of the public. However, the facts showed that within a mere span of nine months from September 2019 to June 2020, the first and second defendants had processed, approved and validated the change in the ownership of the 'cloned' vehicle for five times and had also authorised the change in the registration number of the said vehicle twice on 30 September 2019 and thereafter on 23 June 2020 where the said vehicle's registration number changed from JSS 6590 to AKU 6109 and eventually to PPJ 7711. There was nothing entered on the register or to red flag the vehicle which had allowed multiple transactions before ending up being registered with the plaintiff. (paras 50 & 60)

(5) Upon receiving the report on 6 December 2019 that the said vehicle was cloned, the defendants should have taken all steps necessary to make some notification on the register so that prospective purchasers could be warned. In the report dated 6 December 2019 made by the insurance representative, it was stated that when he went to JPJ Wangsa Maju for a double transfer, the said transaction could not be done as JPJ Wangsa Maju had informed him about the existence of another Toyota Vellfire which bore the same engine and chassis number but with a different registration number and under different ownership. The defendants surely would have sufficient/relevant information to take necessary

action to seize the vehicle or at least take steps to ensure that no further transactions would be performed in relation to the said vehicle. There was more than ample time for the defendants to have added such notifications or particulars of the alleged cloning on the register. (paras 62-64)

(6) If there was any information made available to the defendants in relation to the possible deception of a vehicle, it was then incumbent upon the defendant to ensure that the same was reflected on the register or some other method to red flag the vehicle so that innocent members of the public do not purchase the same. There does not have to be an investigation completed before some notification could be reflected on the register as a means of warning innocent members of the public or intending purchasers that there was an issue with the said vehicle. Once the defendants received a report/complaint or put on notice that a said vehicle was cloned or tampered with, it was incumbent upon the defendants to ensure that the said vehicle thereafter did not change ownership and that all steps be taken immediately to seize the said vehicle for investigation. The plaintiffs clearly relied on the defendants to validate a transfer of ownership of the said vehicle and it would be reasonably expected for the defendant to halt the registration/transaction if there was an issue with the said vehicle. There was certainly a statutory duty imposed on the defendants to ensure that a proper register was maintained at all times. The plaintiff had successfully proven that the defendants had breached their statutory duty. (paras 65-68)

(7) Since the plaintiff had succeeded in her claim for breach of statutory duty where the plaintiff should not/would not have expended such monies as she would not have purchased the vehicle if proper records were kept/maintained, it was fit and proper to award her the said sum of RM138,985 as that was the loss suffered. However, since there was no oppressive, arbitrary or unconstitutional action by the defendants or where the defendants' conduct had been calculated to make a profit for themselves, there was thus nothing exceptional in the defendants' act which warranted an award for exemplary damages. (paras 70-73)

Case(s) referred to:

Baharul Azman Omar & Ors v. Zulhasmi Zakaria & Anor [2023] 8 CLJ 729 HC ***(refd)***

Big Junkyard Sdn Bhd & Anor v. Chan Kah Wai [2023] 1 CLJ 564 HC ***(refd)***

Johara Bi Abdul Kadir Marican v. Lawrence Lam Kwok Fou & Anor [1980] 1 LNS 199 FC ***(refd)***

Pengarah Jabatan Pengangkutan Negeri Selangor & Ors v. Sin Yoong Ming [2015] 1 CLJ 1 FC ***(refd)***

Perbadanan Kemajuan Negeri Selangor v. Teo Kai Huat Building Contractor [1982] CLJ 352; [1982] CLJ (Rep) 257 FC ***(refd)***
Rookes v. Barnard [1964] AC 1129 ***(refd)***
Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors [1997] 1 CLJ Supp 39 HC ***(refd)***
Tan Kim Khuan v. Tan Kee Kiat (M) Sdn Bhd [1998] 1 CLJ Supp 147 HC ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 101, 102, 103
Government Proceedings Act 1956, ss. 3, 4, 5
Road Transport Act 1987, ss. 3(1), (2), (5), 7, 8, 10, 11, 13, 16, 64(1), (4)
Rules of Court 2012, O. 37

For the plaintiff - Simon Murali & Kok Yuen Lin; M/s Simon Murali & Co
For the defendants - Muhammad Sinti; SFC

Reported by Suhainah Wahiduddin

JUDGMENT

Anand Ponnudurai J:

Intoduction

[1] The plaintiff purchased a vehicle second-hand in July after the said vehicle was inspected by Puspakom Sdn Bhd at the behest of the defendants whereafter the said vehicle was registered in the name of the plaintiff on 21 July 2020.

[2] To the plaintiff's dismay, the defendant seized the said vehicle approximately ten months later upon suspicion/discovery that the said vehicle was a cloned vehicle. The said vehicle has yet to be returned to the plaintiff to date.

[3] A cloned vehicle is a colloquial description of a vehicle that bears a deceptive identity where the identifiers of such vehicle such as the registration number, engine number and/or chassis number have been tampered with and do not belong to it but in fact belong to another vehicle.

[4] The plaintiff's claim herein is premised on the following:

(i) that there was no basis to seize the said vehicle in the first place;

(ii) that a cause of action exists founded on the tort of detinue on the basis of a continued wrongful detention of the said vehicle; and

(iii) alternatively, there has been a breach of statutory duty by the defendants.

[5] There is no dispute that the Road Transport Department performs various functions and this dispute brings into focus the obligation it owes to the public in performing its functions. In this regard, it is the cornerstone of the plaintiff's case that the public is entitled to place total confidence in the

accuracy and truthfulness of the information made available in respect of a given vehicle and the confidence that the public must have when acquiring a vehicle which the defendants had inspected, approved and validated in accordance with the provisions of the Road Transport Act 1987 (hereinafter referred to as "RTA 1987").

[6] I will in this judgment set out the background facts, and the issues that arise followed by my analysis and conclusion as to whether the plaintiff has succeeded in proving any of her claims on a balance of probabilities.

Background Facts

[7] The parties have agreed to the following salient background facts:

[8] The first defendant is the Director of Road Transport and the officer-in-charge who heads the Road Transport Department for the State of Penang and is a public officer appointed in accordance with and pursuant to s. 3 of the RTA 1987 and is conferred with a variety of powers under RTA 1987 which include but are not limited to:

(i) keeping and maintaining a register of all registered motor vehicles in the State of Penang pursuant to s. 8 of the RTA 1987;

(ii) receive, process and approve applications for registration of vehicles pursuant to ss. 10, 11 and 13 of the RTA 1987; and

(iii) receive, process and approve applications for motor vehicle licenses pursuant to s. 16 of the RTA 1987.

[9] The second defendant is the Director General of Road Transport of Malaysia appointed pursuant to s. 3(1) of the RTA 1987 and by virtue of s. 3(2), is vested with the power of general supervision and direction of all matters relating to road transport throughout Malaysia. Pursuant to s. 3(5) of the RTA 1987, the second defendant shall perform the duties and exercise the powers conferred upon him under the RTA 1987. Section 64(1) of the RTA 1987 empowers and authorises the seizure and detention of any registered motor vehicles.

[10] The third defendant is the Government of Malaysia who is vicariously liable for any action or omission of employees in the performance of their duties and functions pursuant to ss. 3, 4 and 5 of the Government Proceedings Act 1956.

[11] On 21 July 2020, the plaintiff purchased from one Vinod s/o Palanisamy a vehicle of the make of Toyota Vellfire Z G-Edition bearing the registration number PPJ 7711 (hereinafter referred to as the "said vehicle") and became the registered owner of the same after paying a total amount of RM138,985 being the purchase price of RM134,000, insurance of RM4,155 and payment of road tax of RM830.

[12] Prior to the registration of ownership in the name of the plaintiff on 21 July 2020, the vehicle was brought to a facility owned and operated by Puspakom Sdn Bhd (Company No. 285985-U) for inspection and examination on 20 July 2020. It is a requirement under other relevant laws or regulations applicable that the transfer of ownership of a motor vehicle can only be perfected upon inspection and examination by Puspakom Sdn Bhd in its facilities. At para. 11 of its defence, the defendants plead that they have a concession agreement with Puspakom Sdn Bhd to conduct an examination of vehicles upon transfers with indemnities in place.

[13] Having inspected and examined the said vehicle, Puspakom Sdn. Bhd. issued a certificate captioned "sijil pemeriksaan tukar milik", which confirmed, *inter alia*, that the structural condition, the engine number and the chassis number were in order and free from any defect or interference. The certificate was issued on the same day, 20 July 2020.

[14] On 21 July 2020, upon completion of the aforementioned process, the plaintiff officially became the registered owner of the said vehicle, and in recognition thereof, the Road Transport Department issued a "sijil pemilikan kenderaan", which contained *inter alia*, the material description of the said vehicle including the chassis number and the engine number.

[15] The plaintiff then utilised the said vehicle without any issue until April 2021 when she received a document dated 22 April 2021 from the second defendant captioned "notis panggilan temu siasat" and bore the signature of an officer holding the title "pengarah bahagian integriti". *Vide* this document, the second defendant requested the plaintiff to bring the said vehicle to the first defendant's office on 28 April 2021 which she obliged.

[16] The Road Transport Department officers then examined the vehicle thoroughly in the presence of the plaintiff and her husband, whereafter the plaintiff was instructed to bring the said vehicle to the Chemist Department in Penang for further inspection.

[17] The said vehicle was then taken to the Chemist Department on 6 May 2021 where an inspection was done whereafter the plaintiff was allowed to return with the said vehicle.

[18] Not long thereafter, the plaintiff was served with another document dated 21 May 2021, where she was directed to bring the said vehicle to the compound of the Enforcement Unit of the Road Transport Department for the State of Penang. *Vide* this document, the second defendant informed that the said vehicle is being seized pursuant to s. 64 of the RTA 1987 as there were signs of interference or tampering on the engine number and the chassis number of the said vehicle.

[19] The plaintiff again obliged and brought the said vehicle to the stated venue on 25 May 2021. An officer acting under the instruction of the first defendant took possession of the said vehicle and issued/served the plaintiff a notice of seizure dated 25 May 2021. The notice was issued pursuant to s. 64(1) of the RTA 1987.

[20] Before the plaintiff became its registered owner on 21 July 2020, there were successive changes of ownership in respect of the said vehicle pursuant to s. 13 of the RTA 1987 of which all were undertaken in the offices of the defendants.

Issues To Be Determined

[21] A trial was conducted over a period of five days with a total of 11 witnesses and the parties have agreed that the following are the issues which require judicial determination:

(i) whether the said vehicle bearing the registration number PPJ 7711 was registered under the ownership of the plaintiff in accordance with ss. 10 and 11 or s. 13 of the RTA 1987;

(ii) was the said vehicle a cloned vehicle when registered by the plaintiff?

(iii) whether the seizure of the said vehicle and its continued detention is in breach of s. 64 of the RTA 1987 and is a basis for a claim in detinue?

(iv) if the said vehicle has been cloned, whether the second defendant has committed a breach of statutory duty under the relevant provisions in allowing such vehicle to be registered by the members of the public including the plaintiff and allowing it to be on the road as happened here? and

(v) what is the available remedy to the plaintiff?

[22] In so far as to the first and second issue above, the plaintiff now concedes that the registration of ownership was pursuant to s. 13 of the RTA 1987 which governs the transfer of ownership from one owner to another as opposed to s. 10 of the RTA 1987 which governs the registration of ownership of new vehicles that are purchased from manufacturers.

[23] In so far as the second issue above, whilst the plaintiff had in their pleadings and prior to trial contended that the said vehicle purchased by the plaintiff was not a cloned vehicle, however, after hearing the testimony of the defendants' witnesses at trial, the plaintiff in their submissions concede that the defendants have indeed established (particularly through the evidence of the chemist DW2) that the said vehicle purchased by the plaintiff was indeed a cloned vehicle in that the engine/chassis number was tampered with prior to her purchase.

[24] However, notwithstanding, the plaintiff still maintains that her claim for detinue subsists on the basis that there was no justification to seize the said vehicle and to continue with its detention after three months wherein the crux of the plaintiff's claim is that there was a breach of s. 64 of the RTA 1987.

[25] Alternatively, the plaintiff submits and contends that there has been a breach of statutory duty by the defendants in particular by failing to maintain an accurate register/record of the said vehicle.

[26] These two main issues will be considered hereinafter. However, before I do so, I have not forgotten that the onus lies on the plaintiff to prove her claim against the defendants on a balance of probabilities as enshrined under ss. 101, 102 and 103 of the Evidence Act 1950. (See cases of *Johara Bi Abdul Kadir Marican v. Lawrence Lam Kwok Fou & Anor* [1980] 1 LNS 199; [1980] 1 MLRA 385; and *Tan Kim Khuan v. Tan Kee Kiat (M) Sdn Bhd* [1998] 1 CLJ Supp 147).

Issue No. (i): Whether The Seizure Of The Said Vehicle And Its Continued Detention Is In Breach Of s. 64 Of The RTA 1987 And Is A Basis For A Claim In Detinue?

[27] To recap, it is the plaintiff's contention that whilst s. 64 of the RTA 1987 empowers the second defendant to seize a motor vehicle, such vehicle cannot be detained for more than three months and must be referred to a Magistrate who may make such order he thinks fit in respect of the forfeiture or the disposal of the motor vehicle.

[28] It is perhaps apt that s. 64(1) and (4) of the RTA 1987 be reproduced as follows:

64. Power to seize motor vehicle.

(1) *When any person is found or is reasonably believed to be using a motor vehicle in contravention of this Act or any order or prohibition made thereunder, or in contravention of the terms of the licence for such motor vehicle, any police officer, any road transport officer authorised in writing in that behalf by the Director General, or the Dato Bandar may,* whenever it appears that such motor vehicle or its driver cannot be sufficiently identified or *that such action is necessary to cause a discontinuance of the offence, take or cause to be taken or require the person in charge of a motor vehicle to take such motor vehicle to a place of safety, there to be kept until released by order of a Magistrate, Chief Police Officer, a Director, a Deputy Director authorized in writing in that behalf by the Director General, or the Dato Bandar,* provided and subject to subsection (3), such motor vehicle shall not be detained longer than is necessary to ascertain the identity of the driver or to secure the discontinuance of the offence, and if any person refuses or neglects to comply with any such requirement, he shall be guilty of an offence.

A (2) ...

(3) ...

(4) *When any motor vehicle is detained under this section, the police officer or road transport officer detaining the same shall as soon as reasonably practicable, give notice in writing of such detention to the owner of the motor vehicle* if the
B name and address of such owner is known to him *and if within three months from the date of its detention the motor vehicle is not claimed by its owner, that officer shall refer the matter to a Magistrate, who shall make such order as he thinks fit in respect of the forfeiture or disposal of the motor vehicle and its load (if any).* (emphasis added)

C **[29]** There is no dispute that the second defendant had issued a seizure notice dated 25 May 2021 pursuant to s. 64(1) of the RTA 1987 and that the plaintiff had handed over the said vehicle to the second defendant. It is further undisputed that the plaintiff had *vide* her solicitor's separate letters to the first and second defendants dated 30 July 2021, informed that the plaintiff
D was the owner and requested the return of the said vehicle and that the defendants did not respond to such letters. It is further not disputed that the said vehicle is a cloned vehicle and the subject matter of a police report as a stolen vehicle and that the said vehicle was handed over by the defendants to the police in IPD Nilai, Negeri Sembilan post seizure on 25 August 2021
E to facilitate further investigations in connection with the theft.

[30] It is the plaintiff's case that the defendants must return the said vehicle to her within three months of the seizure or obtain an order from the Magistrate for the forfeiture and disposal of the said vehicle and that the defendants are not allowed under law to continue with the detention of the
F seized vehicle.

[31] The defendants, on the other hand, contend that the said vehicle was lawfully seized from the plaintiff on 25 May 2021 as the second defendant had a legal basis and lawful justification to do so especially since it is now conceded by the plaintiff that the said vehicle was cloned.

G **[32]** It is further contended by the defendants that as the said vehicle was cloned, blacklisted, stolen and currently undergoing investigation by the Royal Malaysia Police (PDRM), the actions taken by the defendants were in accordance with s. 64 of the RTA 1987 and provides a justification for not returning the said vehicle to the plaintiff when requested.

H **[33]** Having considered the above and the facts of this case, with due respect to learned counsel for the plaintiff, I find the claim on the basis of detinue misplaced. First and foremost, since there is no dispute that the said vehicle was in contravention of RTA 1987 by virtue of the fact that it is a cloned vehicle, the said vehicle in my view was lawfully seized with the
I issuance of the form under s. 64(1) of the RTA 1987. In my further view,

s. 64(1) of the RTA 1987 clearly empowers the defendants to seize the said vehicle if it is necessary to cause the discontinuance of an offence. In my opinion, bearing in mind that the allowance of a cloned vehicle to remain on the road is an offence, there was certainly a legal basis and lawful justification to seize the said vehicle.

[34] I now move to the plaintiff's complaint over the non-returning of the said vehicle to her within three months of seizure and the failure to obtain any order from the Magistrate thereafter. However, as noted earlier, the said vehicle was handed over to the IPD Nilai, Negeri Sembilan police station within the three-month detention period to facilitate their further investigation of a stolen vehicle.

[35] In my considered view, the obligation to refer the matter to the Magistrate as stipulated under s. 64(4) of the RTA 1987 only applies if there is no claim by its owner. This is fortified by the use of the words "if within three months from the date of its detention, the motor vehicle is not claimed by its owner, that officer shall refer the matter to a Magistrate". In this case, since there was a claim by the plaintiff within three months *ie*, on 30 July 2021, there was arguably no reason to refer the matter to the Magistrate to make an order for the forfeiture or disposal of the said vehicle.

[36] Further and in any event, on the peculiar facts of this case, bearing in mind that the said vehicle was proven to be a cloned vehicle, in my view, the defendants were more than justified in not returning the said vehicle to the plaintiff when requested or at the expiry of three months as provided under s. 64 of the RTA 1987. In fact, upon the expiry of three months, the said vehicle was handed over to the police in IPD Nilai, Negeri Sembilan.

[37] Encik Syahrul Nizam bin Pawazi, (DW6) in his witness statement marked as WSD6, testified at questions and answers No. 10 to 14 as follows:

10. S: Apakah tindakan yang dilaksanakan selanjutnya?

    J: Unit Pengurusan Sita, JPJ Negeri Pulau Pinang telah melaksanakan siasatan di bawah Seksyen 64 Akta 333 terhadap kenderaan bernombor pendaftaran PPJ 7711. Nombor pendaftaran asal kenderaan tersebut adalah AJY 6063. Pihak JP juga telah berhubung dengan Jabatan Siasatan Jenayah daerah, Ibu Pejabat Polis Daerah Nilai, Negeri Sembilan untuk tindakan seterusnya memandangkan kenderaan bernombor pendaftaran PPJ 7711 (nombor asal AJY 6063) adalah berkaitan dengan Repot Polis iaitu Labu Report 000029/2019 bertarikh 05/01/2019 (kenderaan curi) yang masih dalam siasatan pihak Jabatan Siasatan Jenayah daerah, Ibu Pejabat Polis Daerah Nilai, Negeri Sembilan.

11. S: Selaras dengan siasatan tersebut, apakah keputusan yang dibuat?

J: Pada 25.08.2021, kenderaan bernombor pendaftran PPJ 7711 (nombor asal AJY 6063) yang mana nombor casis dan nombor enjin terdapat kesan gangguan dan nombor casis serta nombor enjin asal dapat dikesan dan merupakan kenderaan curi, telah dilepaskan kepada wakil pihak PDRM dari Bahagian Siasatan Jenayah Daerah, IPD Nilai, Negeri Sembilan untuk tindakan lanjut berhubung Repot Polis Labu Report 000029/2019.

12. S: Boleh kamu jelaskan mengapa kenderaan tersebut dilepaskan/diserahkan kepada pihak PDRM?

J: Kerana terdapat rekod senarai hitam Jabatan Siasatan Jenayah (JSJ) PDRM dalam system kami bagi kenderaan tersebut.

13. S: Boleh beritahu Mahkamah kenapa kenderaan tersebut tidak dilepaskan atau diserahkan semula kepada Plaintif?

J: Sebagaimana yang telah saya nyatakan di atas, kenderaan tersebut tidak diserahkan atau tidak dilepaskan kepada Plaintif memandangkan nombor enjin dan nombor casis kenderaan tersebut telah diusik/tempered dan terdapat laporan dan siasatan oleh pihak PDRM berkaitan kenderaan tersebut.

14. S: Sila rujuk dokumen-dokumen di muka surat 102 dan 115 Ikatan Dokumen Bersama. Boleh jelaskan?

J: Repot Polis di muka surat 102 adalah Repot Polis yang saya maksudkan berkaitan laporan kecurian kenderaan nombor pendaftaran asal AJY 6063. Manakala Akuan Penyerahan Kenderaan bertarikh 25.08.2021 di muka surat 115 adalah berkaitan akuan penyerahan kenderaan tersebut oleh saya kepada pihak PDRM sebagaimana yang saya telah nyatakan di atas.

[38] With respect, if the plaintiff's contention is acceded to *ie*, the said vehicle ought to be returned to the plaintiff upon request or at the end of the three-month detention period, that would, in my opinion, entail a breach of the obligations of the defendants in that it will tantamount to them allowing the continuance of an offence of having a cloned vehicle on the road when the very purpose of s. 64 of the RTA 1987 is to allow the seizure and detention of a motor vehicle to cause the discontinuance of an offence.

[39] The plaintiff refers to the case of *Perbadanan Kemajuan Negeri Selangor v. Teo Kai Huat Building Contractor* [1982] CLJ 352; [1982] CLJ (Rep) 257; [1982] 2 MLJ 165 in respect of a claim of detinue where Abdul Hamid FCJ cited with approval a passage from *Bullen & Leake* 12th edn No. 5, as follows:

> With reference to an action in detinue, *Bullen & Leake* 12th edn: No. 5 has stated at page 358 that:
>
> > An action lies for the specific recovery of personal chattels wrongfully detained from the person entitled to the possession of them, and also for damages occasioned by the wrongful detainer (3 Bl Com 151). The technical name of this action is 'Detinue'. The

> gist of the action is the wrongful detention of goods, and, in general, therefore, it is an action for a wrong independent of contract, and is founded on tort (see *Bryant v. Herbert* (1878) 3 CPD 389); there must be 'some definite act or deliberate withholding as a necessary preliminary to the arising of this cause of action' (*Clayton v. Le Roy* [1911] 2 KB 1031 at 1048).

And at page 359 speaking of right of action it is stated that:

> To support the action, the plaintiff must have the right to the immediate possession of the goods at the time of commencing the action, arising out of an absolute or a special property; The injurious act being the wrongful detention of the goods, and not the original taking or obtaining of the possession, it is immaterial whether they were obtained by the defendant by lawful means, as by a bailment or finding, or by a wrongful act, as by a trespass or conversion. The usual evidence of the detention is that the defendant, having the possession or control over the goods, does not deliver them to the plaintiff when demanded (*Jones v. Dowle* (1841) 9 M & W19). Where there was neither demand nor refusal, no action lay (*Clayton v. Le Roy*, *ante*).

[40] From the above, it is clear that a cause of action for detinue is premised on a wrongful detention of property and depriving another of possession. Having concluded earlier that the seizure and detention of the plaintiff's vehicle was not wrongful, in my view, the plaintiff's claim on the basis of detinue must fail.

[41] However, that is not the end of the matter. As highlighted earlier, the plaintiff has an alternative cause of action *ie*, a breach of statutory duty which I will now consider.

Issue No. (ii): Whether There Was A Breach Of Statutory Duty By The Defendants?

[42] Having conceded that the said vehicle purchased by the plaintiff was indeed cloned, the plaintiff contends that the second defendant has committed a breach of statutory duty under the relevant provisions when it allowed such vehicle to be registered by the members of the public including the plaintiff and allowing it to be on the road as happened in this case.

[43] In this regard, there is no dispute that pursuant to s. 7 of the RTA 1987, no person shall possess a motor vehicle unless the same has been registered. Section 8 of the RTA 1987 imposes a duty on the Director General of Road Transport to keep and maintain a register of all motor vehicles registered under the Act in the registration area for which he is a Director. Such register shall be in such form and contain such information, details and particulars as the Director General may from time to time direct.

[44] On this issue, it is the crux of the plaintiff's case that s. 8 of the RTA 1987 imposes a duty on the first and second defendants to keep and maintain a register of all motor vehicles that have been registered under RTA 1987. Section 8 of the RTA 1987 reads as follows:

> 8. Every Director shall keep and maintain a register of all motor vehicles registered under this Act in the registration area for which he is Director. Such register shall be in such form and contain such information, details and particulars as the Director General may from time to time direct.

[45] The above provision clearly empowers the second defendant to give directions on the information, details and particulars of a given vehicle that should be entered into the register.

[46] Therefore, it is contended that it is the duty of the second defendant to ensure the information, details and particulars of a given vehicle are accurate and reliable. This duty accompanies the power conferred upon him under s. 8 of the RTA 1987.

[47] It is further contended by the plaintiff that if there is any information made available to the defendants in respect of a vehicle which is crucial for the purpose of any prospective transactions thereof, the second defendant has a statutory duty to incorporate such information into the register. For example, if the second defendant is notified that an issue has arisen or a certain vehicle is a 'cloned' vehicle, or possibly one with deficiencies in its identifiers, then the second defendant is obligated under the law to include this information or the details into the register. I find favour with such contention for the following reasons.

[48] The duty under s. 8 of the RTA 1987 and the importance of maintaining a register of vehicles with accurate and reliable information was emphasised by the Federal Court in the case of *Pengarah Jabatan Pengangkutan Negeri Selangor & Ors v. Sin Yoong Ming* [2015] 1 CLJ 1; [2015] 1 AMR 590.

[49] In the case of *Sin Yoong Ming* (*supra*), a member of the public had purchased a used motor vehicle and it was duly registered in his name on 1 April 1999. It subsequently came to light that the said vehicle was a stolen vehicle and upon seizure, it was discovered that the chassis number and the engine number were tampered with. Mr Sin then filed a suit against the Road Transport Department for damages arising out of the defendant's negligence. The evidence adduced in court revealed that the Road Transport Department was informed much earlier in December 1996 itself that the said motorcar was stolen but had not recorded that information in the register. The explanation given for the same was that it was not the practice of the Department to record such information on the register. The High Court

found the defendant liable and ordered damages and such a decision was upheld by the Court of Appeal. In dismissing the Road Transport Department's further appeal, the Federal Court enunciated as follows:

> [36] We are of the view that the registers maintained by the Department pursuant to section 8 of the Act must contain accurate particulars of all vehicles registered by the Department. This is because the prospective purchasers of the vehicles and those involved in the motor trade rely on such information to conduct private and commercial transactions. If the registers are not reliable they will affect those in the motor trade industry and the public who purchase second-hand vehicles. In this connection we agree with the observation made by Siti Norma Yaacob JCA (as she then was) in *Pendaftar Dan Pemeriksa Kereta-Kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd* [2000] 2 CLJ 573 at p. 585:
>
> > ... it is our opinion that the law should be that registers maintained by them must contain accurate particulars of all vehicles registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the registers on payment of a fee and "clearly a duty to take care must exist in such a case." See the case of *Ministry of Housing and Local Government v. Sharp and Another* (*supra*).
> >
> > We also consider that every particular information recorded in the files of a registered vehicle is a representation that such information is accurate and reliable as the paying public particularly owners of motor vehicles, would-be-purchasers of such vehicles and those involved in the motor trade like the respondent, rely on such information to conduct private and commercial transactions. It is this concept of general reliance that imposes a duty on the first and second appellants to take care that all information coming from them are accurate. See the Privy Council case of *Invercargill City Council v. Hamlin* [1996] 2 WLR 367, and the Australian case of *Parramatta City Council v. Lutz* [1988] 12 NSWLR 293. As was said by the High Court of Australia in the case of The Council of the *Shire of Sutherland v. Heyman and Another* [1984-1985] CLR 424, reliance "has always been a important element in establishing the existence of a duty of care. It has been suggested that liability in negligence is largely, if not exclusively, based on the plaintiffs reliance on the defendant's taking care in circumstances where the defendant is aware or ought to be aware of that reliance."

[50] I am cognisant that the claim in the above case was one premised on negligence. However, in my view, the principle that can be distilled is that a statutory duty is indeed imposed upon the defendants to maintain a proper register containing full particulars of a vehicle pursuant to s. 8 of the RTA 1987 for the benefit of the public.

[51] In my further view, in this case, just like in the case of *Sin Yoong Ming* (*supra*), once the defendants were informed in 2019 of the fact that the said vehicle was stolen and the said vehicle's engine/chassis number had been tampered with, the defendant ought to have ensured that such information was reflected on the register. The explanation given by the defendants for not doing so is that since there is no mechanism, procedure or instruction given or stated under law that the said vehicle ought to be blacklisted the moment a complaint was lodged, then there is no/cannot be a breach of statutory duty and that proper/necessary action or investigation ought to be done first by the defendants to verify the said complaint before any necessary action being taken. I find the above explanation unacceptable for the reasons hereinunder.

[52] On the facts of this case, there was a police report dated 5 January 2019, another dated 5 December 2019 and a further complaint/report in respect of the said vehicle dated 6 December 2019. Notwithstanding, the facts will reveal that the following were transactions that occurred in relation to the said vehicle from 12 September 2019 as follows:

[53] On 12 September 2019, the Toyota Vellfire bearing the registration number JSS 6590 was inspected at the Puspakom facility in Johor and the same was cleared upon inspection.

[54] On 27 September 2019, pursuant to the application for a change of ownership at the Road Transport Department in Taiping, the said vehicle bearing registration number JSS 6590 was then subsequently transferred to another owner.

[55] On 30 September 2019, the Road Transport Department in Ipoh processed and approved the change of ownership of the said vehicle pursuant to s. 13 of the RTA 1987, whereby the said vehicle was registered under the ownership of one Kumar a/l A Subramaniam. It is pertinent to note at this juncture that Mr Kumar had applied to the Road Transport Department in Ipoh for a change in the registration number *ie*, from JSS 6590 to AKU 6109 wherein the same was approved on an even date.

[56] Thereafter, on 21 June 2020, the said vehicle bearing the registration number AKU 6109 was sent for inspection at the Puspakom's facility in Johor.

[57] On 22 June 2020, there was subsequent registration in the change of ownership of the said vehicle from Mr Kumar to NBK Motorsport and afterwards to Hermes Enterprise on 23 June 2020 which was followed by a further change of ownership from Hermes Enterprise to Sin Huat Auto Enterprise and eventually to one Mr Vinod.

[58] On 23 June 2020, the Road Transport Department approved the request by Mr Vinod to change the registration number from AKU 6109 to PPJ 7711.

[59] On 21 July 2020, the plaintiff purchased the said vehicle from one Mr Vinod and became the registered owner of the same.

[60] From the above, it is obvious that within a mere span of nine months from September 2019 to June 2020, the first and second defendants have processed, approved and validated the change in the ownership of the 'cloned' vehicle for five times and had also authorised the change in the registration number of the said vehicle twice on 30 September 2019 and thereafter on 23 June 2020 wherein the said vehicle's registration number changed from JSS 6590 to AKU 6109 and eventually to PPJ 7711. It is pertinent to note that there was nothing entered on the register or to red flag the said vehicle which had allowed multiple transactions before ending up being registered with the plaintiff.

[61] In fact, if one considers the evidence of DW6 as highlighted above, he had testified that the said vehicle once seized was released to the police because there was a record of blacklisting within the JPJ system for the said vehicle pursuant to the police report. Bearing in mind that the said police report was dated 5 January 2019 and there was already blacklisting within the JPJ system, I do not see why the transactions were allowed to be carried out on the said vehicle thereafter.

[62] In my considered view, upon receiving the report on 6 December 2019 that the said vehicle was cloned, the defendants should have taken all steps necessary to make some notification on the register so that prospective purchasers could be warned. In this regard, it is pertinent to note that in the report dated 6 December 2019 made by the insurance representative, it is stated that when he went to JPJ Wangsa Maju for a double transfer, the said transaction could not be done as JPJ Wangsa Maju informed him about the existence of another Toyota Vellfire which bore the same engine and chassis number but with different registration number and under different ownership. The report dated 6 December 2019 is reproduced here as follows:

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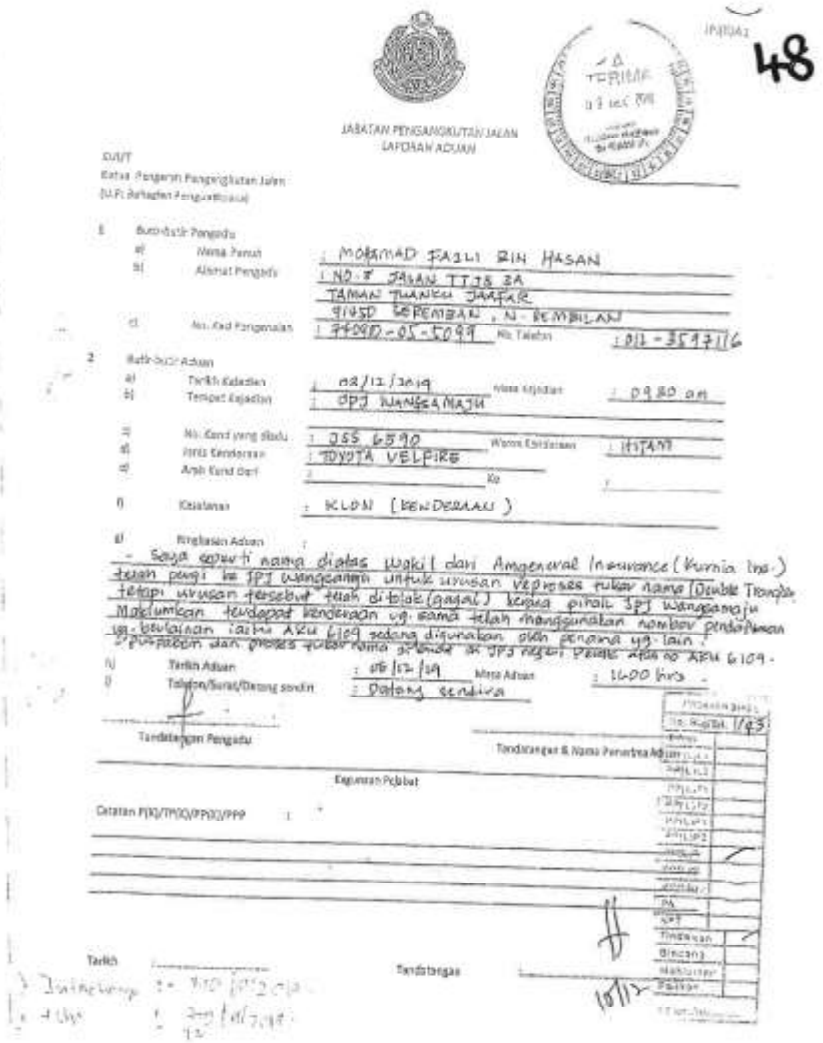
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[63] A perusal of the above will clearly reveal that the complaint refers to an offence of cloning and based on such a report, the defendants surely have sufficient/relevant information to take necessary action to seize the vehicle or at least take steps to ensure that no further transactions would be performed in relation to the said vehicle.

[64] In my view, there was more than ample time for the defendants to have added such notifications or particulars of the alleged cloning on the register. In this regard, Encik Nazri bin Abd Aziz (DW7) confirmed in his evidence that the complaint was received on 6 December 2019 and that the investigation commenced on 17 March 2020 but testified that any decision could only be taken after a full investigation had been conducted. He also testified that the said vehicle could not be blacklisted as only the road tax could be blacklisted if there was a police case and there was a conviction. DW7 testified as follows:

18 S: Aduan telah mula dibuat pada 06.12.2019 dan siasatan telah dimulakan pada 17.03.2020. Boleh kamu maklumkan bagaimanakah transaksi kenderaan tersebut masih boleh diluluskan oleh JPJ selepas daripada tarikh itu?

J: Segala maklumat urusniaga berhubung kenderaan tersebut adalah sebagaimana yang direkodkan dalam sistem JPJ.

Siasatan lengkap dimuktamadkan hanya pada 06.08.2021

Pada masa kesemua transaksi tersebut berlaku termasuk kepada Plaintif, siasatan masih sedang dijalankan. Setelah siasatan lengkap dan keputusan telah dibuat barulah JPJ boleh mengambil tindakan sewajarnya.

19. S: Boleh kamu beritahu Mahkamah kenapa nombor pendaftaran tersebut tidak disenaraihitamkan oleh JPJ setelah mendapat aduan daripada pengadu dan setelah siasatan dibuat?

J: JPJ tidak mempunyai kuasa untuk menyenaraihitamkan kenderaan tersebut kerana menurut undang-undang, lesen kenderaan motor hanya boleh disenaraihitamkan sekiranya terlibat dengan kes polis dan JPJ di mana terdapat sabitan di Mahkamah berkaitan kenderaan tersebut.

[65] It is contended by the plaintiff and which is a contention that I am in agreement with, that if there is any information made available to the defendants in relation to the possible deception of a vehicle, it is then incumbent upon the defendant to ensure that the same is reflected on the register or some other method to red flag the vehicle so that innocent members of the public do not purchase the same. In my view, there does not have to be an investigation completed before some notification can be reflected on the register as a means of warning innocent members of the public or intending purchasers that there is an issue with the said vehicle. Whilst DW7 testified that they could not simply blacklist a car, in my view, this would not have been a case that they were "simply" blacklisting a car but rather them placing some sort of notification on the register highlighting a case of possible cloning or tampering based on the reports filed with them.

[66] In my view, once the defendants have received a report/complaint or put on notice that a said vehicle is cloned or tampered with, it is incumbent upon the defendants to ensure that the said vehicle thereafter does not change ownership and that all steps be taken immediately to seize the said vehicle for investigation. In this case, the plaintiff clearly relied on the defendants to validate a transfer of ownership of the said vehicle and it would be reasonably expected for the defendant to halt the registration/transaction if there was an issue with the said vehicle.

[67] As apparent from the facts of this case, such delay in investigating and not making any notification on the register in respect of cloning *etc*, in the meantime allowed the said vehicle to be transferred several times until it reached ownership with the plaintiff. In my opinion, even if a particular investigation is going to take some time, then surely it is incumbent upon the defendants to ensure that any transactions involving the said vehicle are stopped in the meantime just like how the transaction for the other vehicle was stopped as highlighted in the 6 December 2019 complaint. In this regard, having perused the complaint dated 6 December 2019 reproduced earlier, it is clear that the said transaction of change of ownership for vehicle of JSS 6590 was rejected on 3 December 2019 as it was found to be using a different number of AKU 6109 by someone else. As such, there is certainly some sort of system where the defendant does reject registrations when there are issues raised in respect of a vehicle. Having obtained this report of 6 December 2019 and having rejected the transaction at that time, I certainly cannot understand how the same vehicle thereafter was allowed a change of ownership several times in June 2020 and even a change of number from AKU 6109 to PPJ 7711.

[68] In the upshot, there is certainly a statutory duty imposed on the defendants to ensure that a proper register is maintained at all times and I therefore conclude that the plaintiff has successfully proven that the defendants have breached their statutory duty as highlighted above.

Issue No. (iii): What Is The Available Remedy To The Plaintiff?

[69] The plaintiff seeks a declaration that the seizure and detention of the said vehicle were unlawful or devoid of justification. However, in light of my conclusions earlier, I am not minded to and cannot make such a declaration.

[70] In respect of the alternative claim for breach of statutory duty, the plaintiff seeks an order that the defendants pay the sum of RM138,985 being the total amount expended by her for the said vehicle or alternatively, the value of the said vehicle to be assessed pursuant to O. 37 of the Rules of Court 2012. The defendants contend that it should be the value of the said vehicle at the time of seizure. In my view, however, since the plaintiff has succeeded in her claim for breach of statutory duty whereby the plaintiff

should not/would not have expended such monies as she would not have purchased the said vehicle if proper records were kept/maintained, I find it fit and proper to award her the said sum of RM138,985 as that is the loss suffered.

[71] The plaintiff further claims a sum of RM50,000 for the loss of use of the said vehicle following the seizure and detention of the said vehicle. However, I find that the plaintiff has failed to substantiate such loss and make no such order.

[72] Finally, the plaintiff also seeks exemplary damages. To this end, the plaintiff referred to the case *Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39; [1996] 3 MLJ 337 where it was held as follows:

> While considering the request for exemplary damages, this court must bear in mind that the objective for an award under this category is to punish the defendants, and to display the court's indignant attitude towards the acts committed by the defendant. However, through the enlighten judgment of Lord Devlin in *Rookes v. Barnard & Ors* [1964] AC 1129 (at p. 1226), such damages must be restricted to situations where there are 'oppressive, arbitrary or unconstitutional action by the servants of the government' or where 'the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff'.

[73] On the facts of this case, I find no oppressive, arbitrary or unconstitutional action by the defendants or where the defendants' conduct has been calculated to make a profit for themselves. I find nothing exceptional in the defendants' act that warrants an award for exemplary damages. (See cases of *Rookes v. Barnard* [1964] AC 1129; *Big Junkyard Sdn Bhd & Anor v. Chan Kah Wai* [2023] 1 CLJ 564; [2022] MLJU 2923; [2022] AMEJ 1566 and *Baharul Azman Omar & Ors v. Zulhasmi Zakaria & Anor* [2023] 8 CLJ 729; [2023] 10 MLJ 13).

Conclusion

[74] Upon a careful and judicious consideration of the evidence before me as well as the contentions of both parties, I am of the considered view that the plaintiff has successfully proven her claim against the defendants for breach of statutory duty under s. 8 of the RTA 1987 and I would award her the sum of RM138,985 being the money expended to purchase the said vehicle. As for costs, I order the defendants to pay the plaintiff the sum of RM10,000.